

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SAMIR YOUSIF KADA,

Defendant-Appellee.

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UNPUBLISHED

October 21, 2014

No. 317016

Macomb Circuit Court

LC No. 2012-002024-FH

Before: STEPHENS, P.J., and TALBOT and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order dismissing a charge against defendant for malicious destruction of a building over \$20,000, MCL 750.380(2)(a). We reverse and remand for further proceedings.

In approximately November 2009, GGVR Equities, LLC, managed by Bassam Murad, sold certain real property on land contract to Samir Yousif, defendant's father. The terms of the land contract required a \$90,000 down payment, 13 monthly interest payments of \$3,025, and a balloon payment of \$330,000 at the conclusion of the 13-month period. Yousif, his wife, defendant, and "the kids" lived at the property. Yousif complied with his obligations to make a down payment and interest payments but was unable to make the \$330,000 balloon payment. When Yousif and GGVR Equities failed to reach an agreement for the payment of the remainder of the debt after months of negotiations, GGVR Equities instituted forfeiture proceedings. On or about September 19, 2011, defendant allegedly caused over \$500,000 in damages to the real property. On approximately November 29, 2011, GGVR equities obtained a judgment of forfeiture.

In March 2012, the prosecution filed a felony complaint against defendant, alleging one count of malicious destruction of a building. Thereafter, the district court bound defendant over on the malicious destruction charge. On June 11, 2013, the circuit court dismissed the charge against defendant because Murad, rather than Yousif, the legal owner of the property, was listed as the complaining witness. The circuit court stated on the record that "[t]he real complainant would be the owner of the land contract [meaning defendant's father] . . . not the company [that] entered into the land contract."

On appeal, plaintiff argues that the trial court erred in dismissing the malicious destruction charge. "We review for an abuse of discretion a trial court's ruling on

a motion to dismiss.” *People v Johnson*, 302 Mich App 450, 456; 838 NW2d 889 (2013). “An abuse of discretion occurs when the trial court’s decision is outside the range of principled outcomes.” *People v Russell*, 297 Mich App 707, 715; 825 NW2d 623 (2012) (citation and internal quotation marks omitted). We review de novo underlying questions of law. *Johnson*, 302 Mich App at 456.

The elements of malicious destruction of a building are (1) willful and malicious destruction or injury; (2) of another person’s house, barn, or other building or its appurtenances. MCL 750.380(1). See also *People v Richardson*, 118 Mich App 492, 494; 325 NW2d 419 (1982). Malicious destruction is a specific-intent crime. *People v Culp*, 108 Mich App 452, 458; 310 NW2d 421 (1981). To be malicious, a person’s destruction of property must be “without justification or excuse,” or with a “[r]eckless disregard of the law or of a person’s legal rights.” See *People v Harris*, 495 Mich 120, 136; 845 NW2d 477 (2014), quoting *Black’s Law Dictionary* (9th ed), p 1042. A defendant cannot be convicted of malicious destruction if his or her destruction or injury was authorized by the owner of the property. *People v Foster*, 103 Mich App 311, 320; 302 NW2d 862 (1981).

Here, the trial court determined that because Yousif had not complained about the damage done to the property, the case should be dismissed. As the prosecution correctly observes in its brief on appeal, “[t]he owner, Defendant’s father, has never made a statement that the damage was authorized.” Rather, the record only indicates that Yousif refused to support the prosecution in seeking charges against defendant. That Yousif refused to support the prosecution’s efforts is irrelevant. See *People v Venticinque*, 459 Mich 90, 100; 586 NW2d 732 (1998) (explaining that “the decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor.”). The prosecution should have been given the opportunity to present proofs, and the jury should have been allowed to determine whether defendant was authorized to destroy the property. See *Foster*, 103 Mich App at 320 n 4 (“[T]he jury should be instructed that it must find that the owner of the building did not authorize its destruction for a finding that defendant was guilty of willful and malicious destruction of realty to be an appropriate verdict.”). We therefore reverse and remand for reinstatement of the charge against defendant.

The prosecution urges us to find that a defendant’s destruction of property that is the subject of a land contract can be malicious if it is done without the authorization of the land contract vendor. The prosecution argues that Murad, as the land contract vendor, had an interest in the property and that any destruction of the property without Murad’s consent can be considered malicious destruction of property. We disagree. When a land contract is executed, the vendee purchases the real property and acquires an equitable interest therein while the vendor retains legal title. *Graves v American Acceptance Mtg Corp*, 469 Mich 608, 616; 677 NW2d 829 (2004). For the present purposes, the vendee—in this case, Yousif—is considered the owner of the property, despite the fact that equitable title remained in the vendor. As explained in *Graves*, when parties enter into a land contract:

the vendee acquires “seisin”<sup>[1]</sup> and a present interest in the property that may be sold, devised, or encumbered. That the vendee may ultimately default on the contract does not negate the fact that the vendee has, in a real sense, purchased the relevant property. That legal title remains in the vendor until full performance of all contractual obligations likewise does not negate the fact that the vendee has already purchased the property. [*Id.*]

Furthermore, although the vendor retains legal title, such legal title “is only a trust coupled with an interest by way of security for a debt . . . . It represents but an ordinary money debt, secured by the contract.” *Id.* at 616-617 (citations and quotations omitted). Therefore, the vendee owns the property, and the vendor’s legal title is simply a security interest in the property. See *id.* See also *Darr v First Federal S&L Ass’n of Detroit*, 426 Mich 11, 19; 393 NW2d 152 (1986). Consequently, Yousif was, during the time the property was damaged, the owner of the property, and Murad’s security interest in the property did not make him an owner. Thus, for purposes of determining whether the destruction was authorized by the *owner*, see *Foster*, 108 Mich App at 320 (explaining that a person cannot be convicted of malicious destruction of property if the destruction was authorized by the owner), any authorization or lack thereof by Murad is irrelevant.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens  
/s/ Michael J. Talbot  
/s/ Jane M. Beckering

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<sup>1</sup> “Seisin” is defined as “[p]ossession of a freehold estate in land; *ownership*.” *Black’s Law Dictionary* (10th ed), p 1564. (Emphasis added).